

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BNS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RACHEL ANN STEPP,

Respondent-Appellant.

and

GEROME OWENS,

Respondent.

Before: Meter, P.J., and Murray and Beckering, JJ.

PER CURIAM.

UNPUBLISHED

August 25, 2009

No. 288497

Eaton Circuit Court

Family Division

LC No. 07-016380-NA

Respondent Rachel Ann Stepp appeals as of right from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent first argues that the trial court erred when it terminated her parental rights because the trial court lacked jurisdiction. Jurisdictional challenges are reviewed de novo. *Fisher v Belcher*, 269 Mich App 247, 252-253; 713 NW2d 5 (2005). BNS was born March 20, 2001, to Rachel Stepp and Gerome Owens in Kentucky, and resided there until November 2006, when respondent and BNS moved to Michigan. After a brief stay in Michigan, respondent and BNS moved to Ohio, where they remained for approximately two months until they returned to Michigan. Upon their return to Michigan in January 2007, respondent dropped BNS off with a relative and returned to Kentucky to “take care of legal matters.” A petition for temporary custody was entered January 31, 2007, approximately two weeks after respondent left and had not returned.

The trial court’s exercise of jurisdiction over the termination of parental rights proceeding was proper under two statutory provisions. The first was MCL 712A.2(b)(1), which provides that

the family division of the circuit court has original jurisdiction over a child under the age of 18, found within the county where:

[A] parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian or other custodian, or who is without proper custody or guardianship.

BNS was left in Michigan with a relative who was not given “power of attorney” over her. Although the trial court eventually concluded that Kentucky was the home state of BNS, original jurisdiction over BNS was appropriate when she was left in Michigan with a relative for several weeks without proper guardianship.

The second justification for the exercise of jurisdiction over BNS was the court’s exercise of “temporary emergency jurisdiction” under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1204(1):

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling of the child, is subjected to or threatened with mistreatment or abuse.

“Abandoned” means left without provision for reasonable and necessary care or supervision. MCL 722.1102(a). Here, respondent left BNS with her relatives for several weeks and did not return within the expected time. Furthermore, BNS’s relatives believed there was evidence of abuse and mistreatment, and respondent had a history of criminal convictions and other allegations of abuse and neglect existed.

Respondent essentially concedes that the court properly exercised temporary emergency jurisdiction over BNS, and instead argues that under MCL 722.1204(3) and (4) the court lacked jurisdiction to continue the proceedings beyond any temporary time period. Respondent argues that BNS was subject to ongoing child support proceeding in Kentucky, and the Kentucky court was not immediately notified, a requirement of MCL 722.1204(3) and (4). However, child support proceedings do not fall within the guidelines of MCL 722.1204, as that statute addresses child custody proceedings. “Child Custody” proceedings are defined as, “a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue. Child custody proceedings includes a proceeding for divorce, separate maintenance, separation, neglect, abuse” MCL 722.1102(d). Thus, MCL 722.1204(3) and (4) are not applicable to this case.

Because BNS was not party to child-custody proceedings, MCL 722.1204(2) governs this action. MCL 722.1204(2) provides:

If there is no previous child-custody determination that is entitled to be enforced under this act and if a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under

this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 201 to 203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 201 to 203, a child-custody determination made under this section becomes a final child-custody determination, if that is what the determination provides and this state becomes the home state of the child.

Respondent argues the trial court erred when it commenced parental termination proceedings prior to contacting the Kentucky court. Of course, respondent only raised her jurisdictional objection, citing pending child support proceedings in Kentucky, after termination proceedings commenced, respondent pleaded, and proceedings were almost concluded in Michigan. Despite this timing issue, and even though no child custody proceeding was pending in another state, upon learning of the potential UCCJEA conflict, the trial court contacted the Kentucky court and a determination was made that Kentucky would relinquish any jurisdiction it had over the child to the Michigan court. As expressed in MCL 722.1204(2), the trial court's determination under the UCCJEA is enforceable and is made final once the Kentucky court surrendered jurisdiction of BNS to the trial court. Thus, the trial court properly exercised temporary emergency jurisdiction in those proceedings.

Respondent next argues that the trial court erred in terminating her parental rights because the statutory requirements were not proven by clear and convincing evidence. This court reviews the lower court's determination under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Here, the trial court found that clear and convincing evidence supported terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). To uphold the termination of parental rights, this Court need only affirm one of the three statutory grounds. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). This Court is not convinced that the trial court clearly erred in finding that clear and convincing evidence supported the termination of respondent's parental rights. Throughout the termination proceedings, respondent was given numerous opportunities to regain visitation rights by the court. However, respondent failed to comply with drug screens and treatment programs, used alcohol and cocaine, could not maintain employment, was arrested for drunk and disorderly conduct, and was convicted of criminal mischief in Kentucky. Because of respondent's lack of compliance with the court's guidelines after she was given fair and ample opportunities, the trial court did not err in determining that the conditions that led to the adjudication continue to exist and will not be rectified within a reasonable time. MCL 712A.19(b)(3)(c)(i).

Respondent is currently incarcerated in Kentucky. While she has taken classes to reintegrate herself into society and combat substance abuse, this is insufficient to overcome the trial court's determinations. There is little, if any, evidence to support respondent's ability to provide proper care for BNS in a reasonable time following her release from jail. MCL 712A.19(b)(3)(c)(g). She has not attended parenting classes at the request of the petitioner, nor has she secured housing or employment following her release.

We also hold that termination was in the best interests of the child. While the trial court did not explicitly articulate that termination of parental rights was in BNS's best interest,¹ the evidence supports such a finding. During visits to BNS, respondent was observed having little interest in improving the parent-child bond. She was seen talking on her cell phone during visits, complaining to the child about her personal problems, making promises she did not fulfill, and missing scheduled visits. Furthermore, BNS became indifferent to respondent's absence from scheduled visits. While this Court does not diminish the importance of a parent-child bond, it would be in her best interest to be placed with a guardian who can provide a stable and suitable environment.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Jane M. Beckering

¹ See MCL 712A.19b(5). Although the trial court did not articulate this standard, in light of the evidence failure to do so was harmless error. *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997).